

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of

BellSouth's Petition for Declaratory Ruling  
Regarding the Commission's Definition of  
Interconnected VoIP in 47 C.F.R. § 9.3 and  
the Prohibition on State Imposition of 911  
Charges on VoIP Customers in 47 C.F.R. §  
615a-1(f)(1)

WC Docket No. 19-44

Petition for Declaratory Ruling in Response to  
Primary Jurisdiction Referral, *Autauga County  
Emergency Management Communication  
District et al. v. BellSouth  
Telecommunications, LLC*, No. 2:15-cv-  
00765-SGC (N.D. Ala.)

**OPENING COMMENTS OF BANDWIDTH INC.**

**I. Introduction**

Bandwidth Inc. ("Bandwidth") submits these comments in response to the Federal Communication Commission's ("Commission") Public Notice<sup>1</sup> requesting comments on petitions for declaratory ruling filed in January 2019 by BellSouth Telecommunications, LLC ("BellSouth") and the Alabama 911 Districts of Autauga County, Calhoun County, Mobile County, and the City of Birmingham ("the Districts"), arising out of *Autauga County Emergency Management Communication District et al. v. BellSouth Telecomms, LLC*, No. 2:15-cv-00765-SGC (N.D. Ala.).

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<sup>1</sup> *Pleading Cycle Established for Comments on Petitions for Declaratory Ruling Files by BellSouth and Alabama 911 Districts*, DA 19-125, released February 26, 2019.

Based in Raleigh, North Carolina, Bandwidth provides Internet Protocol (IP)-based communications services to customers throughout the United States. The flexibility of Bandwidth's services, which are backed by Bandwidth's nationwide certified local exchange carrier (CLEC) and state-of-the-art IP-enabled communications network, reduces barriers to market entry and helps to address the evolving communications needs of the public.

Bandwidth sells IP-enabled services in a variety of manners, depending on customer need. Of particular relevance in these proceedings, Bandwidth's services are predominately made up of discrete components and features of voice services that are offered on a wholesale and standalone basis. This means that a Bandwidth reseller customer can purchase one-way service from Bandwidth (such as voice origination service, voice termination service, or 911 service) to incorporate into its own service offerings. Together with these discrete wholesale components, Bandwidth customers may also purchase other services from other providers in the marketplace, and combine the services to create a wide array of product offerings, including two-way voice communications if they choose.

Like BellSouth and other providers, Bandwidth also has been sued in Alabama, and in other jurisdictions, on claims that it has underpaid 911 charges. Bandwidth submits these comments in this proceeding to address the position advanced by the Districts that the Commission's assertion of jurisdiction over interconnected VoIP ("IVoIP") does not preclude the states from imposing 911 charges on VoIP services that are not IVoIP. The Districts' arguments contravene clear Commission regulation, precedent, and well-reasoned public policy objectives. Accordingly, Bandwidth encourages the Commission to reiterate that it has: (1) defined and asserted exclusive jurisdiction over IVoIP<sup>2</sup> and (2) required providers of IVoIP to support 911

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<sup>2</sup> See *Petition of Vonage Holdings Corporation for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 04-267, Memorandum Opinion and Order, 19 FCC Rcd 22404 (2004),

calling<sup>3</sup>, while (3) deferring to state and local authorities to determine 911 taxes and surcharge regimes to apply to IVoIP as defined by the Commission and as limited by Congress.<sup>4</sup>

## **II. Bandwidth's Role as Provider of Wholesale Standalone VoIP Services**

Specifically in the emergency services context, Bandwidth has customers that can (and do) purchase standalone 911, or 911-only, services from Bandwidth. These customers can combine Bandwidth's 911 service with voice origination and voice termination services they obtain from other providers. Bandwidth's offering of 911 calling as a standalone service should not be surprising, even if Bandwidth is somewhat uniquely positioned to sell both 911 as well as a wide array of other IP-enabled services as discrete services. As part of its 911 service, Bandwidth houses and maintains ALI data, and uses that data to route 911 calls to public safety answering points.<sup>5</sup>

While Bandwidth's origination and termination one-way services can be combined with other services to enable a two-way voice communication, as described above, a majority of Bandwidth's telephone numbers are utilized for services that are not combined with other services to create IVoIP. For example, Bandwidth may provide voice origination service, and associated telephone numbers, to a call center. Those numbers are provisioned to receive incoming calls only, consistent with a call center's purpose. Such numbers are not ever provisioned together with

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*aff'd sub nom. Minnesota Pub. Utils. Comm'n v. FCC*, 483 F.3d 570 (8th Cir. 2007).

<sup>3</sup> See *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36, 05-196, *First Report and Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 10245, 10246, para. 1 (2005), *aff'd*, *Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2006); *IP-Enabled Services*, WC Docket No. 04-36, WT Docket No. 96-198, CG Docket No. 03-123, CC Docket No. 92-105, Report and Order, 22 FCC Rcd 11275, 11296-97, paras. 42-43 (2007).

<sup>4</sup> See 47 U.S.C. §§ 615a-1(f)(1), 615(b)(8) (citing 47 C.F.R. 9.3).

<sup>5</sup> This routing does not traverse the public switched telephone network.

termination service (from Bandwidth or any other provider), because the customer does not need outbound calling capability. No two-way voice communication is enabled, and therefore the service is not IVoIP. Pursuant to Commission regulation, only services that constitute IVoIP are required to support 911 calling. And pursuant to Commission precedent regarding its exclusive jurisdiction, only when 911 is required—because there is IVoIP service—is a state or local obligation for the customers of that service to pay taxes or surcharges triggered.

As the Commission recognizes, not all voice services sold in the marketplace enable two-way voice communications. For example, the Commission’s November 2017 action authorizing providers to block robocalls that appear to be from telephone numbers that actually cannot make outbound calls (and therefore have been spoofed) directly acknowledges the existence of telephone numbers that are not equipped with outbound calling capability.<sup>6</sup>

It is against this backdrop that Bandwidth provides these comments. As the Commission is aware, the Alabama lawsuit from which these petitions for declaratory ruling arise is far from the only lawsuit currently pending against the industry relating to 911 charges. There are dozens of such cases, many or all of which are linked to a consultant who stands to personally pocket a significant portion of any monetary recoveries. Bandwidth has been named in these lawsuits despite clear flaws in the claims against it.<sup>7</sup> Relevant here, the entities bringing these lawsuits are proceeding against Bandwidth under the same misguided theory the Districts advance in their petition: that 911 charges are assessable on telephone numbers themselves and on VoIP services that are not IVoIP.

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<sup>6</sup> *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Report and Order and Further Notice of Proposed Rulemaking, FCC 17-151 (rel. Nov. 17, 2017).

<sup>7</sup> Among other defects, these lawsuits include allegations concerning TDM service and other forms of telephony service that are not relevant to Bandwidth, which provides only IP-enabled services.

### III. The Districts Are Incorrect That Federal Law Allows States to Impose 911 Charges Solely on Telephone Numbers or on VoIP Services That Are Not Interconnected VoIP.

In their petition, the Districts point to 47 U.S.C. § 615a-1(f)(1) in support of their position that federal law does not prohibit the imposition of 911 charges on VoIP services that are not IVoIP. The Districts' reliance on § 615a-1(f)(1) is misplaced. In fact, a reading of that provision compels the opposite conclusion. The section states:

“(f) State authority over fees

(1) Authority

Nothing in this Act, the Communications Act of 1934 (47 U.S.C. 151 et seq.), the New and Emerging Technologies 911 Improvement Act of 2008, or any Commission regulation or order shall prevent the imposition and collection of a fee or charge applicable to commercial mobile services or **IP-enabled voice services** specifically designated by a State . . . for the support or implementation of 9-1-1 or enhanced 9-1-1 services, provided that the fee or charge is obligated or expended only in support of 9-1-1 and enhanced 9-1-1 services, or enhancements of such services, as specified in the provision of State or local law adopting the fee or charge. For each class of subscribers to **IP-enabled voice services**, the fee or charge may not exceed the amount of any such fee or charge applicable to the same class of subscribers to telecommunications services.”

47 U.S.C. § 615a-1(f)(1) (emphasis added).

The term “IP-enabled voice services” is a defined term that is explicitly and exclusively linked to the Commission’s definition of IVoIP. 47 U.S.C. § 615b(8) defines “IP-enabled voice services” as follows:

(8) IP-enabled voice service

*The term “IP-enabled voice service” has the meaning given the term “interconnected VoIP service” by section 9.3 of the Federal Communications Commission's regulations (47 CFR 9.3)*  
(emphasis added).

Thus, the provision the Districts cite actually reinforces that 911 charges arise only in the context of IVoIP service. The Commission, in its authority, decided that IVoIP providers must support 911 calling. Because two-way calling capable of exchanging traffic on the public switched telephone network (“PSTN”) has been the linchpin of consumer expectations for emergency calling support, as IP technology has advanced, the Commission has explicitly imposed the requirement to support 911 only on providers of IVoIP, *i.e.*, a two-way PSTN-capable consumer IP service. Consistent with the Commission’s decision making, the states’ authority to impose charges on 911 capability therefore derives from, and is limited to, services that meet the criteria for IVoIP, as set forth in 47 C.F.R. 9.3.

Finally, Section 615a-1(f)(1) also requires that customers purchasing IVoIP services cannot be subjected to a higher amount of 911 charges than customers purchasing traditional basic local exchange TDM-based voice services. Bandwidth agrees with BellSouth that this is plain from the text itself, and is consistent with the Commission’s objective of encouraging the deployment of more technologically advanced communication capabilities through IP-enabled solutions. Bandwidth supports the Commission’s ongoing policy objectives to increase the availability of advanced communications solutions through broadband infrastructure and IP networks and technologies. Adopting the Districts’ position here, which would subject users of IVoIP service to higher 911 charges than users of non-IP-based services, is entirely antithetical to the Commission’s objectives and efforts.

#### **IV. Conclusion**

As set forth above, the Districts’ argument that states have the authority to assess 911 charges on VoIP service that is not IVoIP contravenes Commission regulation, precedent, and decision making. Bandwidth encourages the Commission to reiterate that it has: (1) defined and

asserted exclusive jurisdiction over IVoIP; (2) required providers of IVoIP to support 911 calling; and (3) authorized states to impose charges for that 911 capability on users of IVoIP.

Respectfully submitted,

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